

Case Summary

Leondre C. Woodson appeals his convictions and sentences for possession of cocaine in an amount greater than three grams, possession of cocaine and a firearm, and possession of a firearm by a serious violent felon. We hold the evidence of constructive possession of cocaine and a firearm sufficient to support these convictions. We further hold that the convictions for possession of cocaine in an amount greater than three grams and possession of cocaine and a firearm are premised on one incident of possession of cocaine. Concluding this violates the principle of double jeopardy, we reverse the conviction and sentence imposed for possession of cocaine and a firearm.

Issues

Woodson raises two issues for our review, which we restate as follows:

1. Whether there was sufficient evidence to support the convictions; and
2. Whether the convictions for possession of cocaine in an amount greater than three grams and possession of cocaine a firearm violate principles of double jeopardy.

Facts and Procedural History

On August 27, 2005, Woodson was a passenger in the front seat of a rental car that was pulled over for speeding. Woodson and the driver, Chinedu Onyeji, were driving to Bloomington. Bloomington Police Officer Walter Harris approached the car and asked the driver for his license and registration. When Onyeji opened the glove compartment to get the car rental agreement, the police officer observed Onyeji push a handgun to the side of the glove compartment.

The police officer subsequently ran an inquiry on the handgun to see if it was stolen. He was advised the gun was not stolen and that it had been registered to Onyeji and that Onyeji did have a valid permit to carry a firearm.

Further investigation revealed that the car rental agreement indicated Onyeji had rented the car and included Onyeji's signature. The rental agreement listed Woodson as an additional driver. Officer Harris stated Woodson acknowledged that he was on the car rental agreement as an additional driver, that he had paid for the car rental, and that he had driven the car. Onyeji told the officer the two were returning from a one-day trip to Gary, Indiana. Woodson told the police officer they went to Gary because he needed to obtain his birth certificate and an identification card and they made stops at the Bureau of Motor Vehicles and at his friend's house.

Based on the circumstances of the stop, Officer Harris stated he suspected Woodson and Onyeji might be involved in drug trafficking. Officer Harris noted the two appeared nervous, had paid for a car rental with cash, and had taken a one-day trip to Gary. Officer Harris asked Onyeji if he could search the trunk of the vehicle, but Onyeji declined to allow the search. Officer Harris asked Woodson for permission to search the trunk, and Woodson consented to the search.

The officer opened the trunk and found it to be empty. He then opened the spare tire compartment and observed two bags of a white powdery substance and a handgun. Subsequent testing showed the bagged substance was cocaine. The separate amounts weighed 113.96 grams and 13.34 grams respectively. Woodson denied knowledge of the

items.

Woodson and Onyeji were arrested. During a later statement to the police, Onyeji told the police that the gun in the trunk was Woodson's.

Woodson was charged with Count I, dealing in cocaine, a Class A felony; Count II, possession of cocaine in an amount greater than three grams, a Class C felony; Count III, possession of cocaine while in possession of a firearm, a Class C felony; and Count IV, possession of a firearm by a serious violent felon, a Class B felony.¹

On December 12-13, 2005, a jury trial was held. At trial, Onyeji testified that Woodson gave him the money in cash to rent the car and that he rented the car to take Woodson to Gary for personal business. The rental car was kept at Onyeji's residence from the time it was rented until the next day when the two men left for Gary. Onyeji kept the keys on a bookshelf in the kitchen of his apartment. Onyeji testified that he did not think Woodson owned a gun, but that he had seen Woodson with a gun in the past. *Id.* at 243. Onyeji claimed he agreed to go with Woodson because he wanted to look at a sofa and because Woodson agreed to pay for all of the expenses of the trip. Onyeji acknowledged he brought his own gun on the trip and that it was the gun in the glove compartment. Onyeji had told Woodson that he was bringing his gun.

According to Onyeji, the two left for Gary from Bloomington around 2:00 p.m. During the trip, they stopped for gas and Woodson opened the trunk of the vehicle and placed two t-shirts in the trunk. The two arrived in Gary around 6:00 p.m. They went to the

Office of the Bureau of Motor Vehicles to get Woodson an identification card, but the office was already closed. They then stopped at Woodson's girlfriend's house and at another house to see one of Woodson's friends. Onyeji testified he waited in the car at each stop. At the friend's house, Onyeji observed Woodson stand at the door for a few minutes, then enter the house for five to ten minutes. When Woodson returned to the car, Onyeji did not observe Woodson holding anything in his hands or with bulges or a gun tucked in his pants. Woodson asked Onyeji to open the trunk. Woodson then reached into the trunk and retrieved the two t-shirts.

The jury found Woodson to be not guilty of dealing cocaine. However, the jury found Woodson guilty of possession of cocaine in an amount greater than three grams, and guilty of possession of cocaine while also in possession of a firearm. The jury also made a specific finding that Woodson was in possession of a firearm. Following the jury's verdict, Woodson admitted to being a serious violent felon.

On February 2, 2006, a sentencing hearing was held. The court sentenced Woodson to six years in the Department of Correction for Count II, possession of cocaine in an amount greater than three grams; six years for Count III, possession of cocaine while also in possession of a firearm; and fourteen years for Count IV, possession of a firearm by a serious violent felon. The court ordered that the sentence imposed in Count III is to run concurrent with the sentence imposed in Count IV, and the sentence in Count IV is to run consecutive to the sentence imposed in Count II. Woodson now appeals.

¹The original charging information was amended without objection, changing the numerical order of

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

Woodson challenges the sufficiency of the evidence supporting his conviction. When reviewing the sufficiency of evidence supporting a conviction, the appellate court will neither reweigh the evidence nor judge the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). Rather, the court looks to the evidence most favorable to the verdict with all reasonable inferences to be drawn from that evidence. Id. If there exists substantial evidence of probative value to support the verdict, and the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, the verdict will remain undisturbed. Id.

B. Evidence of Possession

Woodson challenges the sufficiency of the evidence supporting his convictions for possession of cocaine and possession of cocaine with a handgun. He argues the State failed to prove he “intentionally” or “knowingly” engaged in the prohibited conduct. He further argues the State failed to prove he constructively possessed either the cocaine or the firearm that was recovered from the rental car.

The mere presence of a passenger in a car in which contraband or a handgun are being transported is insufficient to find the passenger guilty of possession of the contraband or handgun. See Grim v. State, 797 N.E.2d 825, 830-34 (Ind. Ct. App. 2003). However,

the charges. We will refer to the charges as amended.

possession may be either actual or constructive. Conrad v. State, 747 N.E.2d 575, 582 (Ind. Ct. App. 2001), trans. denied. For instance, a person who has direct physical control over a firearm has actual possession. Grim, 797 N.E.2d at 831. Constructive possession occurs when the person has the intent and capability to maintain dominion and control over the firearm. Id. To prove the element of intent, the State must demonstrate the defendant's knowledge of the presence of the firearm. Id. Knowledge may be inferred from either exclusive dominion and control over the premises containing the firearm, or from evidence of additional circumstances indicating the defendant's knowledge of the presence of the firearm. Id.

The following types of evidence are among those utilized by the State to show proof of the defendant's dominion and control over a firearm: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) proximity of the firearm to the defendant; (4) location of the firearm within the defendant's plain view; and (5) the mingling of a firearm with other items owned by the defendant. Id. The State must also present evidence demonstrating the defendant's capability to exercise control over the firearm, such as the ability to reduce the firearm to his personal possession or to otherwise direct its disposition or use. Conrad, 747 N.E.2d at 582-83.

Here, Woodson did not have exclusive control over the rental car in which the cocaine and firearm were found. Therefore, we must consider the evidence in light of additional circumstances indicating Woodson's knowledge of the presence of the contraband and his ability to exercise control over it. Id.

Woodson asserts that although the cocaine and firearm were found in the trunk of the rental car of which he was a passenger, there was no evidence indicating he put anything other than a t-shirt in the trunk. He further argues there is no evidence that he ever accessed the spare tire compartment, or that he knew the cocaine or firearm were in the spare tire well.

Our review of the evidence reflects that cocaine and a handgun were found in the trunk of the rental car in which Woodson was a passenger. Woodson admitted to renting the car with Onyeji and paying for the car. Woodson accessed the trunk to put in and take out t-shirts. Thus, Woodson had the ability to maintain dominion and control over the contraband. Additionally, Woodson planned the trip, and was the person directing the stops during the day. He was also the only person who accessed the trunk. These facts are sufficient to allow the trier-of-fact to conclude that Woodson had the requisite intent to constructively possess the contraband and was therefore guilty of possession of cocaine and the handgun.

Based on these facts, there was sufficient evidence to show that Woodson was in constructive possession of the contraband found in the trunk of the shared vehicle. Accordingly, we hold the evidence was sufficient to support Woodson's convictions for possession of cocaine and possession of cocaine with a handgun.

II. Double Jeopardy

A. Standard of Review

Under Article I, Section 14 of the Indiana Constitution, a person may not "be put in jeopardy twice for the same offense." Two or more offenses constitute the "same offense" in violation of Article I, Section 14 if, with respect to either the statutory elements of the

challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense. Alexander v. State, 768 N.E.2d 971, 973 (Ind. Ct. App. 2002) aff'd on reh'g, 772 N.E.2d 476, trans. denied.

Our inquiry under the “actual evidence test” looks to the actual evidence presented at trial, not proof of the elements themselves. Alexander, 772 N.E.2d at 478. For there to be a double jeopardy violation it is not required that the evidentiary facts establishing all of the elements of the one challenged offense also establish all of the essential elements of a second challenged offense. Both of the offenses being analyzed for double jeopardy purposes must be viewed in the context of the other offense. If the evidentiary facts establishing any one or more elements of one of the challenged offenses establishes the essential elements of the second challenged offense, double jeopardy considerations prohibit multiple convictions. Id.

B. Multiple Convictions

Woodson contends the trial court erred when it convicted him of both possession of cocaine in an amount greater than three grams and possession of cocaine and a firearm because the two convictions are premised on one incident of possession of cocaine. He asserts this violates Article I, Section 14 of the Indiana Constitution. The State concedes and we agree.

Here, the police did find two quantities of cocaine in the rental car. However, simultaneous possession cannot support multiple convictions. Campbell v. State, 734 N.E.2d 248, 250-52 (Ind. Ct. App. 2000). Indiana’s double jeopardy clause prohibits the State from

proceeding against a defendant twice for the same criminal transgression.

We conclude that the convictions for possession of cocaine in an amount greater than three grams and possession of cocaine while in possession of a firearm are premised on one incident of possession of cocaine. These convictions violate principles of double jeopardy. Thus, we vacate the conviction and sentence imposed for possession of cocaine and a firearm.

Conclusion

The evidence was sufficient to show that Woodson was in constructive possession of the contraband found in the trunk of the shared vehicle. Accordingly, we hold the evidence was sufficient to support Woodson's convictions for possession of cocaine and possession of cocaine with a firearm. However, because Woodson's convictions on Counts II and III violate Article I, Section 14 of the Indiana Constitution, we remand with instructions to the trial court to vacate Woodson's conviction on Count III.

Affirmed in part, reversed in part, and remanded.

BAKER, J., and DARDEN, J., concur.